

Message Text

UNCLASSIFIED POSS DUPE

PAGE 01 BRASIL 06311 211505Z

60

ACTION L-03

INFO OCT-01 ARA-16 ISO-00 SCA-01 JUSE-00 RSC-01 DRC-01

/023 W

----- 007956

R 211220Z AUG 74

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 5169

UNCLAS BRASILIA 6311

E.O. 11652: N/A

TAGS: PFOR

SUBJECT: PENDING SOVEREIGN IMMUNITY LEGISLATION

REF: STATE 026018/1

1. EMBASSY WAS ABLE TO OBTAIN COOPERATION OF LOCAL LAW FIRM IN PROVIDING ANSWERS TO QUESTIONS IN REFTEL. IN APOLOGIZING FOR DELAY, FIRM PARTNER EXPLAINED THAT THEY FELT OBLIGED TO GIVE FIRST PRIORITY TO PAYING CLIENTS. WHAT FOLLOWS IS BASED ON MATERIAL FIRM PROVIDED.

2. ARTICLES 119 AND 125 OF THE BRAZILIAN CONSTITUTION, DEALING WITH RESPECTIVE JURISDICTIONS OF FEDERAL SUPREME COURT AND FEDERAL JUDGES, COVER INTER ALIA CASES BETWEEN A FOREIGN STATE OR AN INTERNATIONAL ORGANIZATION AND EVERY LEVEL OF GOVERNMENT IN BRAZIL (I.E., FEDERAL, STATE, TERRITORY, FEDERAL DISTRICT, MUNICIPAL). INDIVIDUAL FOREIGNER IN BRAZIL WOULD ALSO BE ABLE TO BRING SUIT ON BASIS THAT BRAZILIAN LAW DOES NOT DISTINGUISH BETWEEN CITIZENS AND FOREIGNERS (THUS RECIPROCITY WOULD NOT HAVE TO BE SHOWN). LAWYERS NOTE THAT ARTICLE 385 OF CIVIL PROCESS CODE REQUIRES THAT A PLAINTIFF, CITIZEN OR FOREIGNER, RESIDING OF TRAVELLING ABROAD DURING PERIOD OF LITIGATION, MUST DEPOSIT SUM SUFFICIENT TO GUARANTEE FEES OF OPPOSING LAWYER UNLESS HE HAS REAL ESTATE TO ASSURE PAYMENT. STATUTORY BASIS FOR BRINGING SUIT WOULD BE, BEYOND CONSTITUTIONAL ARTICLES MENTIONED
UNCLASSIFIED
UNCLASSIFIED

PAGE 02 BRASIL 06311 211505Z

ABOVE, PORTION OF LAW HAVING TO DO WITH SPECIFIC MATTER. PERSON NEGLIGENTLY INJURED BY VEHICLE, FOR EXAMPLE,

WOULD POINT TO ARTICLE OF CIVIL CODE HAVING TO DO WITH NEGLIGENCE AND ATTENDANT OBLIGATION OF GUILTY PARTY TO INDEMNIFY.

3. LAWYERS DECLARED THEIR UNDERSTANDING THAT FOREIGN GOVERNMENTS ARE NOT SUBJECT TO BRAZILIAN JURISDICTION UNLESS THEY SUBMIT TO IT VOLUNTARILY. (SIMILARLY, BRAZILIAN GOVERNMENT IS NOT SUBJECT TO FOREIGN COURTS). IN SUPPORT OF THEIR BELIEF, LAWYERS CITED TWO SUPREME COURT DECISIONS, ONE IDENTIFIED AS "ORIGINARY CIVIL ACTION NUMBER 160" FOUND IN "REVISTA TRIMESTRAL DE JURISPRUDENCIA", VOLUME 54, PAGE 141, AND THE OTHER AS "APPEWL OF PETITION NUMBER 56.466", FOUND IN "REVISTA TRIMESTRAL DE JURISPRUDENCIA", VOLUME 66, PAGE 727. NOTING THAT NEVERTHELESS SUITS ARE BROUGHT AGAINST FOREIGN GOVERNMENTS, LAWYERS SAID PROCESS IS SERVED "BY THE NORMAL MEANS FORESEEN IN THE CIVIL PROCESS CODE", EITHER DIRECTLY ON THE CONSULATE OR EMBASSY OR, IN THE CASE OF LABOR MATTER, BY MAIL. REGARDING NOTIFICATION OF HOST GOVERNMENT, LAWYERS IDENTIFIED ATTORNEY GENERAL (PROCURADOR GERAL), LAWYERS NOTED THAT IN SAME WAY THE "PREDOMINANT JURISPRUDENCE OF THE BRAZILIAN SUPREME COURT RECOGNIZES THE IMMUNITY OF FOREIGN COUNTRIES FROM BRAZILIAN JUSTICE, BTAZIL DOES NOT ACCEPT THE JURISDICTION OF FOREIGN JUSTICE IN CASES BROUGHT AGAISNT IT".

4. REGARDING ATTACHMENT OF ASSETS OF FOREIGN STATE, LAWYERS DECLARED THEIR UNDERSTANDING THAT PUBLIC GOODS OR PROPERTY (BENS), THAT WHICH BELONGS TO THE STATE (BRAZILIAN OR FOREIGN), ARE BY BRAZILIAN LAW NOT SEIZABLE, EVEN IN CASES OF FORCIBLE EXECUTION. FIRST CASE CITED IN PARA 3 ABOVE, PAGES 144-145, CONTAINS REMARKS OF JUSTICES REGARDING IMPOSSIBILITY OF CARRYING OUT FORCIBLE EXECUTION AGAINST FOREIGN STATE.
CRIMMINS

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, DIPLOMATIC PRIVILEGES, LAW, DEBTS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 AUG 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BRASIL06311
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740230-1190
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740831/aaaabafo.tel
Line Count: 97
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: STATE 026018/1
Review Action: RELEASED, APPROVED
Review Authority: elyme
Review Comment: n/a
Review Content Flags:
Review Date: 24 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 JUN 2002 by reddocgw>; APPROVED <27 JAN 2003 by elyme>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PENDING SOVEREIGN IMMUNITY LEGISLATION
TAGS: PFOR, US, BR
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005